THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.23105 OF 2005

Dated: 23-02-2006

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Between:

Sri Krishna Naik @ Raju Naik … Petitioner

And

1. Commissioner of Police, Cyberabad,

and 2 others. … Respondents

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.23105 OF 2005

ORDER:

This writ petition is filed seeking a Writ of Mandamus declaring the action of the respondents 1 and 2 in registering FIR No.211/2005 dated 23.10.2005 against the petitioner on the basis of a complaint made by the 3rd respondent and seizing the vehicles of the petitioner, as arbitrary, illegal and in violation of Article 14 of the Constitution of India, and consequently to quash the said FIR, and forth with release the vehicles.

The 3rd respondent lodged a complaint dated 23-10-2005 with the 2nd respondent stating as under :

She along with her sister and mother purchased plot Nos.184 & 185 situated in Sy.No.229 of Manchirevula village, Rajendranagar Mandal, Rangareddy District from M/s. Sai Civil Engineers and Consultants, represented by K.V.P. Subbaiah under Registered Sale Deeds dated 18-2-1998. They erected a fence around the said plots and the boundaries mentioned in the sale deeds fully tally with the layout of 1997 and that they have been continuing in possession and enjoyment of the plots. While so, the Writ Petitioner removed the fencing and also started constructing a compound wall over a huge area including their plots stating that he had purchased the entire land through the auction by Vysya Bank. However, when enquired with the Bank, the authorities told them that the Bank never conducted any auction of the land in Sy.Nos.227 & 229. It was further alleged that K.V.P. Subbaiah and the petitioner and others colluded and trespassed into their plots along with the plots of various other people and were illegally developing the land with a clear motive to sell the same to unsuspecting people by inducing them. It was also alleged that K.V.P. Subbaiah and his associates had fraudulently prepared a new layout in the year 2001 for the Sy.No.229 and other survey numbers which were already sold in the year 1997-98 which was covered by the original layout of the year 1997 and thus they were openly cheating innocent people including the complainant. That apart, one Venkateswara Rao, representing K.V.P. Subbaiah had been insisting that the complainant shall accept meagre amounts for both the plots and to compromise the matter. Therefore necessary enquiry may be made and punitive action may be taken against K.V.P. Subaiah, Raju Naik (writ petitioner) and Venkateswara Rao and protect their lives and properties.

On the basis of the above complaint, the 2nd respondent – Inspector of Police registered Cr.No.211 of 2005 under Sections 420 and 468 of I.P.C. against all the three persons whose names were mentioned in the complaint. The petitioner was shown as accused No.2 and the investigation was taken up.

Aggrieved by the registration of the First Information Report (FIR) and initiating criminal proceedings, so far as the petitioner is concerned (accused No.2), this writ petition is filed.

In the affidavit filed in support of the writ petition, the petitioner states that he is the owner of the land to an extent of Ac.7.05 guntas, situated in Survey No.227 of Manchirevula village, Rajendranagar Mandal, Ranga Reddy District, having purchased the same under Registered Sale Deeds, dated 4-7-2002. The said property originally belonged to four persons by name B. Chandra Mouli, P. Uma Shankar, Smt. Subbamma and Smt. Kusuma Kumari, who mortgaged the same to the Vysya Bank Limited, Uppal Branch in respect of the credit facilities availed by a third party for which they stood as guarantors. Since they could not redeem the mortgage, they authorised the Bank to sell the mortgaged property to any third parties for the purpose of recovering the amounts and thereby clearing the loan amounts due to the Bank out of the sale proceeds. In pursuance thereof, the petitioner came forward to purchase the said properties and on payment of the entire sale consideration, sale deeds were executed and registered in favour of the petitioner to which the official of the Vysya Bank, Uppal Branch was also a signatory as a witness. Since then the petitioner has been in possession and enjoyment of the said land situated in Sy.No.227.

After acquiring title under the Registered Sale Deeds, before taking possession of the land; on a request made by the petitioner, the Mandal Revenue Officer, Rajendranagar Mandal got the land surveyed with reference to the area mentioned in the sale deeds and a sketch was prepared by the Mandal Surveyor thereby demarcating the Sy.Nos.227 & 228 and deciding the boundaries under a panchanama dated 2-6-2004.

However, the 3rd respondent raised a dispute and lodged a complaint with the 2nd respondent alleging that the petitioner was a land-grabber. She also made an application for demarcation of her land in Sy.No.229 and in pursuance thereof, the Office of the Collector, Survey and Land Records, Ranga Reddy District, issued proceedings dated 4.05.2005 wherein notice was given to all the concerned, including the writ petitioner, to attend the demarcation proceedings on 10.05.2005. The petitioner was present and the land situated not only in Sy.No.229, but also in Sy.No.227 was surveyed under a panchanama. After conducting the said survey, a letter dated 12.05.2005 was addressed to the Assistant Director, Survey and Land Records, informing that the land of the petitioner is situated in Sy.No.227. In spite of the same, the allegations made by the 3rd respondent that the petitioner was a land-grabber was given wide publicity by the media in May, 2005.

That apart, the 3rd respondent filed O.S.No.253 of 2005 on the file of the Principal Junior Civil Judge, Ranga Reddy District at L.B. Nagar, seeking perpetual injunction restraining the defendants from interfering with her possession and enjoyment over the plots bearing Nos.184 and 185, admeasuring 1,370 sq. yards and 1,333 sq. yards respectively, forming part of Sy. No.229 of Manchirevula village, Rajendranagar Mandal, Ranga Reddy District. In the said suit, the writ petitioner was arrayed as the 2nd defendant and M/s. Sai Civil Engineers and Consultants, represented by its Managing Partner, K.V.P. Subbaiah, was shown as the 1st defendant. In the plaint, it was alleged that the 1st defendant was carrying on Real Estate business, from whom the plaintiff purchased the suit schedule plots for a valuable consideration under registered sale deeds dated 18.02.1998. It was also alleged that the 1st defendant who had no manner of right or title to deal with the said plots after sale in favour of the plaintiff, was attempting to sell the plots in question to the 2nd defendant by changing the demarcations. It was further alleged that the 2nd defendant was trying to demarcate the said plots. Pending the said suit, the trial Court granted *ex parte* temporary injunction which is still operating.

In spite of the pendency of O.S.No.253 of 2005 in the Civil Court, the 3rd respondent lodged the complaint dated 23-10-2005 with the 2nd respondent making

the allegations noted above and on the basis of the same FIR.No.211 of 2005 on the file of Narsingi Police Station was registered in which the petitioner was arrayed as accused No.2.

The petitioner contends that the registration of the said FIR No.211/2005 is *per se* bad in law, without there being any proper application of the mind to the relevant factors. It is also pleaded that after registration of the crime, police have seized three vehicles belonging to the petitioner, which were not involved in the crime in any manner. Hence this Writ Petition.

The 2nd respondent – Station House Officer filed a counter-affidavit stating that as per the investigation conducted in Cr.No.211 of 2005, it was found that the 3rd respondent purchased the plots in question situated in Sy.No.229 and she was in possession from 1998 onwards. The plea of the 3rd respondent that she fenced the plots and erected a name board, was testified by two witnesses, owning plots adjacent to the plots in question i.e., Plot Nos.184 and 185, in the same lay out. After visiting the scene of offence and after examining some witnesses, the provision of law was altered, and new Sections 447, 427, 471 and 506 of the IPC have been added to the said crime number, and an alteration memo was also filed before the Criminal Court by the Investigating Officer. The said alteration was made on the complaint that the petitioner criminally trespassed into the plots, removed the fencing as well as the Name Board; and that the 3rd respondent was threatened with dire consequences. So far as seizure of the vehicles is concerned, it is stated that as per the investigation, the petitioner criminally trespassed into the land of the 3rd respondent and removed the fencing and changed the physical features of the plots with the help of two tippers, one tractor and one water tanker, without registration. As the above said vehicles were used for commission of the offence, they were seized and were produced before the 8th Metropolitan Magistrate Court, Rajendranagar. Hence the allegation that the vehicles were highhandedly seized is incorrect and without any basis. The vehicles were seized under a *Panchanama* and they were produced before the competent Court of law.

The 3rd respondent filed a separate counter-affidavit stating that she along with her mother and sister purchased plot Nos.184 and 185, situated in Sy.No.229 of Manchirevula village - vide registered sale deeds dated 18.02.1998. Their vendor was one K.V.P. Subbaiah, Managing Partner of M/s. Sai Civil Engineers and Consultants. The sale was made on the basis of a lay out of the year 1998. It is alleged that the writ petitioner along with the said K.V.P. Subbaiah, the vendor of the 3rd respondent, took up Real Estate activity and having obtained another lay out during the year 2001, they have dishonestly induced delivery of property and deprived the rights of the purchasers who have already purchased the plots in the year 1998. The petitioner was also trying to change the location of the plots and their survey numbers. However, the 3rd respondent admitted the fact that she filed O.S.No.253 of 2005 in the Court of the Additional Junior Civil Judge, Ranga Reddy District, which is pending and that an order of injunction in I.A.No.377/2005 dated 11.03.2005 is in force. It is alleged that in spite of the order of injunction, the petitioner and his henchmen were trying to change the nature of the property and were making unauthorized constructions and also indulging in criminal acts. Hence, she was constrained to lodge the complaint before the 2nd respondent.

The Writ Petitioner filed an affidavit in reply, disputing the version of the respondents that Mr. K.V.P. Subbaiah and his associates have fraudulently prepared a new lay out in the year 2001 in Sy.No.227. It is further stated that he never trespassed into the land of the 3rd respondent nor removed any fencing nor changed physical features, as alleged by the 3rd respondent, and as a matter of fact, his land is situated in Sy.No.227, and is surrounded by a compound wall, and the same is in existence for more than a year.

I have heard the learned Counsel for the petitioner, the learned Government pleader for Home appearing for the respondents 1 and 2 as well as the learned Counsel appearing for the 3rd respondent.

A perusal of the complaint dated 23-10-2005 made by the third respondent shows that she is claiming title and possession in respect of two plots bearing No.184 and 185 situated in Sy.No.229 of Manchirevula village, having purchased the same from M/s. Sai Civil Engineers and Consultants, represented by K.V.P. Subbaiah, under two Registered Sale Deeds dated 18-2-1998. So far as the writ petitioner is concerned, it was alleged in the complaint that he had removed the fence erected around the plots of the 3rd respondent and constructed a compound wall over a huge area including the plots of the 3rd respondent. All other allegations in the complaint are only against K.V.P. Subbaiah through whom the third respondent claims to have purchased plot Nos.184 and 185 and his associates which need not be gone into for the purpose of this writ petition.

It is to be noted that in the complaint itself, it was mentioned that the writ petitioner informed the third respondent that he had purchased the entire land through auction conducted by Vysya Bank. However, it was added that the said plea proved to be a white-lie since the Vysya Bank Authorities stated that they never conducted any auction of any land in Sy.Nos.227 and 229 and that the writ petitioner did not purchase any land from them. The complainant further stated that their enquiries revealed that the writ petitioner purchased a small piece of land in Sy.No.227 from one K.V.P. Subbaiah who was representing M/s. Sai Civil Engineers and Consultants.

The material on record reveals that the 3rd respondent was aware of the title claimed by the petitioner in respect of certain extents of land in Sy.No.227 of Manchirevula village. That apart, admittedly, the claim of the third respondent in respect of the two plots in question relates to Sy.No.229, but not Sy.No.227. She herself states that the said two plots are situated in Sy.No.229 and the same were purchased on the basis of a layout made in the year 1997. In the complaint, it was alleged that K.V.P. Subbaiah had fraudulently prepared a new layout in the year 2001 in respect of Sy.No.229 and other survey numbers which were covered by the original layout of the year 1997 and were already sold, and was attempting to cheat the innocent people.

It is also relevant to note that much prior to the abovesaid complaint lodged

with the 2nd respondent, the third respondent along with her sister and mother filed O.S.No.253 of 2005 on 18-2-2005 in the Court of the Principal Junior Civil Judge, Rangareddy District seeking a Permanent Injunction restraining the defendants from interfering with the possession and enjoyment of the plaintiffs in respect of Plot Nos. 184 and 185 forming part of Sy.No.229 of Manchirevula Village. The writ petitioner herein was made a party to the said suit as defendant No.2. The allegation was that the 1st defendant i.e., M/s. Sai Civil Engineers and Consultants, represented by its Managing Partner Sri K.V.P. Subbaiah, and the 2nd defendant (writ petitioner herein) taking advantage of the absence of the plaintiffs from Hyderabad were trying to sell the plots to third parties. It was stated that the cause of action arose on 15-2-2005 when the defendants 1 and 2 were trying to interfere with the suit plots.

It is not in dispute that pending the said suit the third respondent made an application in the office of the Collector, Survey & Land Records, Rangareddy District, seeking demarcation of Sy.No.229 and in pursuance thereof after notice to the parties concerned, including the writ petitioner, K.V.P. Subbaiah and the third respondent, the survey was conducted on 12-5-2005 and the land in Sy.No.229 was demarcated with the help of teapons and village map and the boundary-marks were fixed up by the Deputy Inspector, Office of Survey & Land Records, Chevella. On the basis of the said survey, the Deputy Inspector who conducted the survey submitted a report dated 12-5-2005 to the Assistant Director, Survey & Land Records, Rangareddy District stating that whereas the sale deed of the third respondent reveals that Plot Nos.184 and 185 existed in Sy.No.229, the third respondent showed her plots in Sy.No.227 contrary to her sale deed.

Thus, it is clear that there is a serious dispute about the location of the plots of the third respondent. Though she claims that they are situated in Sy.No.229, she could not identify the same in Sy.No.229.

Admittedly a Civil Suit is pending in a competent Court of law with regard to the dispute between the third respondent and the writ petitioner. However, the third respondent without disclosing the fact that such a civil suit is pending, lodged a

complaint with the 2nd respondent on the very same set of facts against the same persons seeking prosecution. Since admittedly the matter involves several disputed questions of fact and the dispute is apparently i s of a civil nature with regard to which a civil suit is already pending before a competent court of law and a temporary injunction is operating and particularly since admittedly the complaint itself reveals that there is a dispute with regard to the identity of the plots claimed by the third respondent, the institution of criminal proceedings against the writ petitioner who claims title to the land in different survey number appears to be nothing but abuse of process of law. Both the third respondent and the writ petitioner are claiming ownership in respect of different extents of land in Sy.Nos.229 and 227 respectively. Hence, while accepting the title claimed by the third respondent, the title of the writ petitioner acquired under Registered Sale Deeds through Vysya Bank Limited, Uppal Branch cannot be brushed aside and he cannot be termed as an encroacher while the civil suit is still pending.

As a matter of fact, the report of the Assistant Director of Survey & Land Records, R.R. District, dated 1-12-2005 submitted in pursuance of the directions of the Revenue Divisional Officer, Chevella Division in the proceedings initiated under Section 145 of the Code of Criminal Procedure in respect of the disputed land in Sy.Nos.227 and 229 of Manchirevula village shows that the Deputy Inspector had demarcated the entire boundary of Sy.No.229 with the help of teapon and village map and it was found by the survey team that the site pointed out by the 3rd respondent as Plot Nos.184 and 185 forms part of Sy.No.227 which is in possession of the writ petitioner. The said survey was conducted in the presence of both the parties and even the third respondent had signed the panchanama, though under protest.

In the light of the above material, even the allegations contained in the complaint lodged by the third respondent i.e., the petitioner had entered into the plots claimed by the third respondent and attempted to change the physical features by erecting a fence are taken to be correct, the same do not constitute any offence since the land in question forms part of Sy.No.227 belonging to the petitioner himself.

It is true that this Court will not embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint in exercise of the extraordinary jurisdiction under Article 226 of the Constitution of India. However, as held by the Supreme Court in STATE OF HARYANA vs. BHAJANLAL { 1992 SCC (crl.) 426 },the extraordinary power under Article 226 can be exercised to quash the criminal proceedings either to prevent abuse of the process of any court or otherwise to secure the ends of justice where the allegations made in the First Information Report or the Complaint even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or to make out a case against the accused.

In the circumstances, the dispute, if any, with regard to the identity of the two plots claimed by the third respondent is a matter for adjudication by the Civil Court in the suit which is already pending between the same parties, but the initiation of proceedings for criminal prosecution on the basis of the very same set of allegations, particularly when the allegations contained in the complaint, on the face of it make out no offence against the writ petitioner is unwarranted.

For the aforesaid reasons, Cr.No.211 of 2005 on the file of Narsingi Police Station shall stand quashed as against the petitioner herein.

It is made clear that this Court shall not be understood to have recorded any finding conclusively with regard to the rival claims of the parties and O.S.No.253 of 2005 shall be tried and decided independently in accordance with law uninfluenced by any of the observations made in this order.

The Writ Petition is accordingly disposed of. No costs.

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G. ROHINI, J.

Dt. 23-02-2006.

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THE HON'BLE Ms. JUSTICE G. ROHINI

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WRIT PETITION No.23105 OF 2005

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Dated: 23-02-2006